

Minutes
Committee on Equal Opportunities
Council on Postsecondary Education
June 16, 2008

The Committee on Equal Opportunities met June 16, 2008, at the Council on Postsecondary Education, Frankfort, Kentucky. Chair Phyllis Maclin presided.

Roll Call

Members present: Phyllis Maclin, Jerome Bowles, Jesse Harris, John Johnson, Lisa F. Osborne, Ryan Quarles, Wendell C. Thomas, Joseph Weis, David Welch, Raoul Cunningham, and Charles Whitehead.

Members absent: N/A

Approval of Minutes

The minutes of the April 21, 2008, meeting were adopted as distributed.

Action: West Kentucky
CTC Campus Visit Report

RECOMMENDATION: The Council staff recommends that the CEO adopt the report of its campus visit to West Kentucky Community and Technical College, April 21, 2008, and that the report be forwarded to the KCTCS president and WKYCTC president along with a request that a report regarding its implementation be given at the October 2008, CEO meeting.

Mr. Sherron Jackson and Dr. Rana Johnson presented the findings identified by the report. The CEO visited West Kentucky Community and Technical College in Paducah, Kentucky, April 2, 2008 to meet with campus leaders, students, faculty, and other members of the campus community. The meetings were designed to give committee members an opportunity to hear from selected members of the educational community. Campus visits are not meant to gather scientific, empirical data, but rather to learn first-hand about the success of equal opportunity plan implementation on the WKYCTC campus.

Key findings:

- The evidence presented by the college supports a conclusion that the institution is experiencing moderate success but faces challenges in some key areas. It was noted that the WKCTC is performing well above most community and technical colleges, a good sign that access and equity are becoming engrained in the fabric of the institution. The variety of initiatives and programs identified to attract African American and other ethnic minority

students to WKCTC show promise and may have the effect of increasing the level of excitement and support across the service community. The strength of the approaches is the college's willingness to continually assess program impact and make changes.

- Students stated that overall their experience at WKCTC has been positive, but suggested that they would like to see a more diverse faculty and staff.
- With a shift toward more loans to support the educational experience, combined with widening tuition gaps, there are implications regarding how effective the institution's policy is in encouraging choice for ethnic minority students. An evaluation of the effect of implementation of current policy and subsequent adjustments if needed should be completed.
- Availability of positions, individual background characteristics, campus characteristics, and environment play a vital role in influencing whether ethnic minorities will apply and strongly consider a position at WKCTC. WKCTC should evaluate the recruitment efforts, policies, and procedures to ensure efficiency of implementation and an environment that embraces diversity.

The full report is on the CPE Web site at www.cpe.ky.gov.

MOTION: Mr. Cunningham moved to adopt the report with specified revisions. Mr. Whitehead seconded the motion. VOTE: The motion passed.

Action: Murray State
University Campus Visit
Report

RECOMMENDATION: The Council staff recommends that the CEO adopt the report of its campus visit to Murray State University April 22-23, 2008, and that the report be forwarded to the MuSU president along with a request that a report regarding its implementation be given at the October 2008, CEO meeting.

Mr. Jackson and Dr. Rana Johnson presented the findings identified by the report.

Key findings:

- The variety of initiatives and programs identified to attract African American and other ethnic minority students to MuSU show promise and may have the effect of increasing the level of support across the campus community. The strength of the approaches will be MuSU's willingness to continually assess program impact and to test whether paths to educational access are visibly open and, if not, to make changes. The level of performance by MuSU has improved since the last campus visit though some challenges still exist.
- The president concluded his remarks by identifying some of the

challenges that the institution confronts and commented on the intent of the institution to continue to work diligently to address them. Some of the challenges identified include the geographical location of MuSU in regard to student recruitment, building an educational community that enables minority students to own a certain level of acceptance and comfort when they enroll, and the dearth of African American faculty.

- Students believe their experience at MuSU has been positive, but suggested that they would like to see a more diverse student body, as well as faculty representation. It was also noted that the SGA should make a greater effort to include diverse student groups.
- The general consensus was that more collaboration and strategic planning is needed between various constituents at MuSU to support the recruitment, admission, retention, and graduation of all students, particularly African Americans. All segments of the university should clearly understand their role in retention strategies. The general perception is that the special unit is responsible for retention of African American students but that very few resources are available to accomplish the task.
- The initiatives and activities in this area might benefit from having a cross departmental group to provide leadership for catalyzing the efforts of others, developing new initiatives and providing focused leadership to the graduate and research program areas to create more diversity and opportunity after programs are completed.
- Focus groups indicated that they believe that MuSU is doing a good job. However, they acknowledge a disconnect among the faculty and professional staff regarding their joint responsibility for student retention and faculty and staff diversity.
- The institution must provide both symbolic and material resources to encourage and undergird the change process on campus. This means having the appropriate title(s) and being able to work with the reflective power of the president or provost, having a healthy budget to partner with others, seeding initiatives, and influencing behavior through the promise of incentives, support, and reward.

The full report is on the CPE Web site www.cpe.ky.gov.

MOTION: Mr. Welch moved to adopt the report. Mr. Thomas seconded the motion. VOTE: The motion passed.

Status Report: Somerset
Community College
Campus Visit Report

Mr. Jackson reported that because of commitments of President Jo Marshall, the committee agreed to receive at its June meeting the initial SCC report on the status of implementing recommendations contained in the CEO campus visit report. The report is expected to identify strategies used by the institutions to implement each recommendation and include discussions regarding the level of

success and how success is evaluated. Representatives of Somerset Community College and the Kentucky Community and Technical College System were on hand to present the report in June.

Report: Institutional 2008
Departments of Public
Safety Report

Dr. Johnson reported that the primary role of the institutional department of public safety is to provide a safe environment that protects students, faculty, staff, administrators, and visitors on campus, and occasionally in the vicinity immediately adjacent to the campus. The CEO requests institutions to submit reports annually.

The committee's interest is focused on how institutions view the interaction between campus police and students in its strategy to increase student retention as well as provide a welcoming environment that recognizes the benefits of establishing a diverse educational community. The report provides a summary of activities at the public universities between January 1, 2007, and December 31, 2007. Although the Kentucky Community and Technical College System does not employ campus police at the community and technical colleges, administrators submitted a report in response to the CEO request.

The full report is on the CPE Web site www.cpe.ky.gov.

Report: Institutional 2008
Campus Environment
Team Report

Dr. Rana Johnson reported that the campus environment teams (CETs) are a component of *The Partnership Agreement* and *The Kentucky Plan* for Equal Opportunities in Postsecondary Education. In accordance with Commitment A.3.h of the partnership, each university pledged to establish a CET responsible for addressing campus and community issues with the goal of improving the campus climate for minority students. The teams support student organizations, community/technical colleges, and university initiatives that enhance the co-curricular experiences of African American students, faculty, professional staff, and administrators.

The CETs accomplish their work by identifying concerns, developing programs or strategies to address them, and offering recommendations for improvement to the presidents. The CEO recognizes institutions that are successful in creating positive, nurturing environments for African American students, staff, faculty, and administrators, and encourages the remaining institutions to replicate the atmosphere through resource and information sharing.

Each of the universities, as well as the Kentucky Community and Technical College System, submitted a report that highlighted the 2007 institutional campus environment teams.

The full CET report is on the CPE Web site www.cpe.ky.gov.

Status: *The Partnership Agreement and The Kentucky Plan*

Partnership Agreement: The OCR has not reported any change in the status of the reports submitted to the U.S. Department of Education regarding Kentucky's status under the partnership agreement.

GMSCPP

Governor's Minority Student College Preparation Program Annual Conference: The University of Kentucky hosted the 8TH Annual Statewide Conference of the Governor's Minority Student College Preparation Program June 3-4, 2008. Students participated in hands-on experiments in biology/environment, engineering, and physics students built an electrical circuit board as well as a snap circuit. Approximately 200 middle and junior high school students participated.

GMSCPP Academically Proficient Seniors and Juniors Conference: Murray State University hosted the 21ST Annual Academically Proficient African American High School Senior and Junior Conference June 13-14, 2008; 300 students, parents, and college representatives participated in the event.

Status: *Statewide Diversity Study Preliminary Findings*

Mr. Jackson introduced this item and stated that the preliminary findings were shared with institutions and CEO for review and comment. Comments were shared with HCRP for their consideration and possible inclusion in the final report. He then introduced Dr. Gary Orfield, principal investigator for the Harvard Civil Rights Project, currently located at the University of California Los Angeles. Dr. Orfield reported to the committee via interactive television and discussed preliminary findings and recommendations of the study.

He noted that the study is expected to produce targeted research to inform diversity planning in Kentucky and present recommendations on policies or changes in policy that are necessary at the Council and institutions to ensure compliance with the standards articulated by the

U. S. Supreme Court in the Michigan cases *Grutter* and *Gratz*, Kentucky law, and federal law.

Summary of Consultant Comments:

The primary finding is that postsecondary education have made major progress under the Kentucky Plan, but still confronts some large challenges and that a continued strong focus on issues of access, equity, and diversity at both the state and campus levels will continue to be essential for some time to come. Educators across the state share this view. A broad consensus among the leaders of postsecondary education is that successful diversity is a central responsibility and goal of their institutions and has a very important educational value.

The study being conducted by HCRP is not a statewide diversity plan, the Commonwealth and institutions must develop their own diversity plans. However, as requested by the contract, the study is designed to provide the basic data and recommendations needed by the Commonwealth to guide the development of diversity plans. The final report will contain the legal foundation and other recommendations to assist postsecondary institutions and the Commonwealth of Kentucky to develop diversity plans.

- The research shows that the Commonwealth has made significant and solid progress toward realizing the commitments established and agreed to by the U. S. Department of Education Office for Civil Rights in 1982 and again in 1999. While the calendar expiration dates have passed, the research also shows that there are areas still to be addressed if the Commonwealth is to fully realize the intent of the plans to have an educational system that provides access and success in the educational arena.
- The research shows that the Commonwealth still has work to do to accomplish the enhancement of the historically black Kentucky State University in four significant areas: (1) land grant, (2) programs, (3) funding for operations, and (4) mission (governmental services center). Solutions are not provided but suggested approaches to engaging in a conversation that will offer a resolution to the lingering concerns are offered.
- The diversity rationale focuses on the legal boundaries established by the institution and state; the rationale does not require implementation of a certain policy but relies on a larger and more focused review of policy at the local level—diversity planning is not one size fits all. By design, it is more general and not specific. Each institution must, based on its mission and service region, identify those things that make diversity a compelling interest.
- The enforcement efforts by CPE have been diligent and highly beneficial; however, there are aspects of the process that require attention. The consultants recommend that CPE/CEO move from a compliance mode to an accreditation/collaborative mode. Institutions do not have sufficient funding to fully implement effective programs to achieve the expectations of the existing plan. There should be more rewards offered institutions to encourage strong implementation of the equal opportunity policy.
- Based on HCRP interviews, leaders of the state's institutions expressed strong agreement with the objective of increasing the diversity of their student and faculty communities and creating a

supportive campus environment where all students are welcome and have opportunity. They also expressed a strong desire to have greater flexibility and much reduced accountability on these factors. When the policy shifts from remedial planning to diversity planning the accountability process should include ways to give institutions credit where efforts have been made without great success.

- The research indicates that critical mass is a concern. There is a massive loss in the P-12 pipeline which hampers the ability of institutions to have the level of prepared students needed to influence and diversify their student bodies. Also, the leakage in terms of transfers of students from the community and technical college system to four-year institutions is significant and the Commonwealth needs to address this issue quickly.
- The research indicates that the policies on admission should reflect a holistic approach rather than rely heavily on race. They noted that some institutions have begun to use the holistic approach but others need to begin looking strongly at making the approach a priority, particularly if the Commonwealth shifts to a diversity policy. Institutions not using a holistic approach will likely encounter difficulty.
- The consultants noted that the Council's Committee on Equal Opportunities has made a great deal of difference for Kentucky and that it is in important respects, a model for the nation. However, sometimes the way the CEO conducts its business causes intense discussion, friction, and resentment. The CEO should find a way to seriously enforce policies without creating unnecessary conflict and polarization.
- The community and technical colleges are making serious efforts in spite of limited resources and complexities of serving a low-density state, slow-growth state with limited resources, large concentrations of rural and small town poverty, and low historic level of educational attainment.
- Pursuing diversity through well crafted, race conscious measures, and statewide enforcement by the CPE is an appropriate path for the Commonwealth to follow.
- The Commonwealth cannot remedy societal discrimination as a compelling interest, and cannot promote the use of the need for role models for minority students as a compelling state interest. And, the basic elements of narrow tailoring (used by KY) require documentation that a policy is flexible, that it does not unduly

burden non minorities, that it is necessary, and that the institution has considered race-neutral alternatives.

- o The research indicates that, under narrow tailoring, the primary test used by the courts evaluates the fit between a compelling interest and the policy adopted to advance that interest. There is no single test for narrow tailoring.
- o Consideration of race-neutral alternatives does not require that an institution exhaust every possible alternative, nor does narrow tailoring require that institutions choose between maintaining a reputation for excellence and selectivity on the one hand and maintaining a commitment to diversity on the other.

Questions raised by the Committee:

1. We asked that HCRP review the race based programs that might exist in Kentucky and give an opinion regarding their continued use. Did HCRP review these programs? If so, what is the finding?
2. You imply that lower courts have given significant advice on many of the legal questions and case law to support a position that race conscious program can be implemented. Provide examples and clarify for us what the case law is. What are your expectations and how would you advise Kentucky to use the advice of the lower court?
3. It is your advice that the bar is not likely to be set excessively high by a court applying Grutter? If so, why do you feel that way, base on what evidence?
4. Are you saying that what an institution or state must show to establish diversity in a future case is an open question? What do you base this position on?
5. Your comments appear to imply that Title VI is some how independent of the equal protection law, is that your intent? Please explain, because we have been advised that these issues operate collaboratively, what is it that makes you believe differently? Will your report explain how they operate separately? How would you advise the courts would view disparate effects in this instance? The Sandoval case was suggested as an example.
6. One of the points I believe you are putting forward is that the Supreme Court has not provided any guidelines on employment, but I wonder how the guidance given by the Third Circuit in the Taxman case inform your advice? And how will your report address its influence regarding this matter?
7. You imply that the diversity interest is compelling as a matter of law, if that is the situation what specifically do schools need to produce to articulate diversity interests that arise from the

nuances of their own missions and institutional needs? If it is a matter of law why would the courts expect institutions to provide support for their asserted diversity interest? Will the report include detailed discussion of this matter?

8. When viewing race neutral alternatives as discussed in the contract and as presented by you, it is unclear when you suggest that institutions should document their serious consideration of workable race neutral alternatives; does that mean that a professional effort to gather facts, and make judgments or some other approach? Will your report discuss these points in any detail and will you discuss the question of whether the people and processes used to consider race neutral alternatives are comparable to what the institution uses for other highly significant institutional issues – could such an approach meet the test used by courts? It does not appear that your report cover this topic in any detail.
9. We have received mixed reviews on the idea of using targets or goals in the equal opportunity planning process, we have heard that use of targets, would in the diversity planning arena, place the Commonwealth and an institution on the defensive immediately – if that is true, why would HCRP suggest that this approach be used to present a low probability of targeted court challenge? We asked HCRP to identify ways to implement a diversity plan that do not expose the Commonwealth to a high degree of exposure to court actions – does the suggestion that you make clearly shield the Commonwealth and institutions?
10. How would an institutions or the Commonwealth show that goals or targets do not influence the decisions of the admissions officers—could this be considered racial balancing in the guise of broad goals, and so on? What alternatives to goals or targets do you offer?
11. Some hold that the key critical mass question is whether an institution can show it is getting a sufficient mix of students (not just racial/ethnic) to produce the educational benefits needed to fulfill it's mission. How do you suggest that this be determined—should the university provost, faculty, and other administrators be involved directly in these determinations as educational experts? Will your report include detailed discussion of this topic?
12. Is it your advice that a holistic individual admissions process is the best alternative for diversity planning? Why or why not? Point systems are magnets for challenge in court.
13. What is your advice on periodic review? Should it include both the features included in a plan plus new race neutral alternatives to ensure that future fine tuning can take place? Why or why not and is this going to be included in any detail in your report? (Goes to the question of whether race should be used at all or at

- the same level to achieve the stated compelling interest.)
14. You seem to offer an opinion that Kentucky should be confident that the law supports race conscious policies other than minority-only policies; if strict scrutiny is a tough standard, why would defending use of race that contributes to different benefits for people of different races be automatically considered warranted? Aren't you implying a false sense of security with such implications? Discuss this more please.
 15. You appear to say "it would be possible to uphold even a minorities-only policy that does not overly burden non-minority students – but you do not offer any strong arguments that would support this position, would you elaborate please? Is there sufficient evidence to support this position? Isn't it legally problematic to advance policies, based on stereotypes like minority students can or cannot benefit from particular settings or strategies? Please elaborate.
 16. After we consider all you are suggesting, what would prevent a court from saying public consideration of race in any kind of university activity is divisive and harmful, per se? What do you suggest as the appropriate risk analysis?
 17. Again, after considering your arguments about race only support programs being defensible, what do you suggest as the appropriate risk analysis, and would it not be better if participation in these programs not be limited by race?
 18. I am really concerned about your arguments regarding financial aid – particularly the implication on race targeted financial aid. I understand that even in the best of circumstances this policy would be very, very difficult to defend under the principles of Gratz and Grutter. Please explain clearly your advice here in terms of a holistic approach or another approach and what are you recommending?

Overall the presentation by the consultants was good. However, the CEO did note a number of areas that require serious work by the consultants.

Information: Fall Campus Visits

Dr. Johnson reported that the CPE Presidential Search Committee has requested that the CEO change its October 20 meeting date to allow flexibility for CEO/CPE members to meet their obligation related to both sets of meetings. The CEO was asked to consider changing its October meeting date to October 15-17 or October 29-31. The committee agreed to give the chair the latitude to set the meeting date once the Presidential Search Committee has established its meeting date and to report the revised date back to the group.

The CEO agreed to conduct campus visits at Northern Kentucky University and Gateway Community and Technical College. A

combined CEO meeting, university campus visit, and KCTCS college campus visit will be undertaken over three days (two days at the university and one day at the community and technical college).

Institutional Representatives Reports

The institutional representatives were offered an opportunity to provide status reports regarding access and equal opportunity on their campuses or to make other comments before the committee.

Institutional representatives are:

Ms. Sandra Moore, Eastern Kentucky University
Dr. Kimberly Holmes, Kentucky State University
Ms. Francene Botts-Butler, Morehead State University
Ms. Camisha Duffy, Murray State University (represented by Ms. Sabrina Dial)
Dr. Willie Elliot, Northern Kentucky University
Dr. Gwen Joseph, Kentucky Community and Technical College System
Mr. Terry Allen, University of Kentucky
Dr. Mordean Taylor-Archer, University of Louisville
Dr. Richard Miller, Western Kentucky University

Information: Joint CPE/CEO Meeting

Mr. Jackson reported that a joint meeting of the Council on Postsecondary Education and the Council's Committee on Equal Opportunities is scheduled Thursday, June 26, 2008, to receive the final report of the Statewide Diversity Study by the Harvard Civil Rights Project.

At its April 21 meeting, the committee requested that Council staff and Chair Phyllis Maclin work with CPE chair John Turner to schedule a joint meeting to receive the final report of the HCRP. The presentation will be made by Dr. Gary Orfield, principal investigator for the project.

The joint meeting was cancelled to give institutions more time to review the preliminary report and for any needed revisions to be made by the consultants.

General Information

Articles and reports about access and equal opportunity of general interest to the committee and its work were provided for information.

Adjournment

The meeting adjourned at 12:45 p.m.